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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BELFOR USA GROUP, INC., a Colorado Corporation.

Case No. 2:10-cv-01220-PMP-GWF

Plaintiff,

**STIPULATION AND ORDER RE
PRODUCTION OF CONFIDENTIAL
INFORMATION**

Plaintiff Belfor USA Group, Inc., ("Plaintiff") by and through its attorneys, the firms of Jaffe, Raitt, Heuer & Weiss and Nersesian & Sankiewicz, and Defendant Wells Fargo Bank, N.A., ("Wells Fargo"), by and through its attorneys, Snell & Wilmer L.L.P., (collectively "the Parties" or individually a "Party") hereby stipulate to the following Confidentiality Agreement:

WHEREAS the parties in this matter may be required under Federal Rules of Civil Procedure, or pursuant to written discovery requests, to produce documents and/or information that contain proprietary information, sensitive financial information, confidential information, documents containing business procedures and/or policies that the Parties have a desire to remain confidential, and/or trade secrets (hereinafter collectively referred to as "*Confidential Information*").

1 WHEREAS, in light of the foregoing, the Parties have agreed to establish procedures to
2 protect the confidentiality of the Confidential Information;

3 NOW, THEREFORE, it is hereby stipulated and agreed, and the Court is respectfully
4 requested to enter an Order, as follows:

5 1. Any discovery response, information, document or thing produced, and/or all
6 deposition testimony given in connection with this litigation that contains sensitive information
7 may be designated as Confidential Information. Confidential Information may include: (a) all
8 paper, tapes, documents (including answers to document requests, interrogatories, and requests
9 for admission), disks, diskettes, emails and other electronic data, and other tangible things
10 produced by or obtained from any person in connection with this litigation; (b) transcripts of
11 depositions, in whole or in part, and exhibits thereto; and (c) all copies, extracts, and complete or
12 partial summaries or charts or notes prepared or derived from such papers, documents or things.
13 The handling of such information shall be made in accordance with the terms of this Order. A
14 discovery response, information, document or thing produced, and/or all deposition testimony
15 may be designated as Confidential Information by one of the following methods:

16 a. In the case of documents or other materials (apart from depositions or other
17 pretrial testimony): by affixing the legend "Confidential" to each page containing any
18 Confidential Information, except that in the case of multi-page documents bound together
19 by staple or other permanent binding, the word(s) "Confidential" need only be stamped on
20 the first page of the document in order for the entire document to be treated as
21 Confidential; and,

22 b. In the case of depositions, including exhibits thereto, or other pretrial
23 testimony: (i) by a statement on the record, by any counsel or the deponent, at the time of
24 such disclosure; or (ii) by written notice from any Party's counsel or the deponent or
25 his/her counsel, within ten business days after receiving a copy of the transcript thereof,
26 designating all or some of the transcript and/or documents referred to therein as
27 Confidential. Such written notice must be sent to counsel for all Parties, the deponent and
28 counsel for the deponent. Only those portions of the transcripts so designated as

1 “Confidential” must be treated as Confidential. The Parties may modify this procedure
2 for any particular deposition, by a writing signed by counsel for all Parties and by the
3 deponent or counsel for the deponent, without further order from the Court.

4 2. The designation “Confidential” shall apply to materials and information that may
5 be disclosed to the parties and others identified in this Order for the purposes of the litigation, but
6 which is intended to be protected against disclosure to third parties. Absent a specific order by
7 the Court to the contrary, once designated as “Confidential,” such information shall be used by
8 the parties solely in connection with this litigation, and not for any business, competitive, other
9 litigation or governmental purpose or function, and such information shall not be disclosed to
10 anyone except as expressly provided herein.

11 3. If a party inadvertently fails to mark “Confidential” upon production of
12 information, the disclosing party may subsequently designate that material as Confidential by
13 giving written notice to the receiving party and providing properly marked or designated copies
14 within fifteen (15) days of such notice. In the event information is not marked as confidential and
15 is used by the opposing party prior to any confidential designation, it shall be incumbent upon the
16 designating party to prove the confidential nature of such material to the Court.

17 4. Any party may, at any time, request or contest in writing that any Confidential
18 Information be released from the requirements of this Confidentiality Agreement. A party who
19 makes such a contention shall be referred to in this Order as the “Requesting Party”. Upon
20 written contention, the party claiming that information is “Confidential” shall meet and confer
21 with the Requesting Party within ten (10) days of receipt of a written request therefor. If an
22 agreement cannot be reached by negotiation, and the Court has not provided for a different
23 procedure to handle such disputes, then the Requesting Party may make an application for a
24 ruling from the Court on the continued application of the “Confidential” designation of such
25 information or document. The Requesting Party shall submit the contested Confidential
26 Information to the Court for in camera inspection, and the terms of this Stipulation and Protective
27 Order shall continue to apply to such Confidential Information until the Court rules on the
28

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1 application. The burden of proof to maintain the Confidential designation shall remain with the
 2 Party seeking the Confidential designation.

3 5. Confidential Information and information derived from Confidential Information,
 4 including without limitation any testimony about an exhibit designated as Confidential, shall not
 5 be disclosed except as set forth herein.

6 6. Confidential Information may only be disclosed to the following persons:

7 a. any party and counsel of record for any party to this action;
 8 b. paralegal, stenographic, clerical and secretarial personnel employed by
 9 current for a party to the case, (including but not limited to photocopy service personnel and
 10 document management vendors, such as coders and data-entry personnel, retained by outside
 11 counsel);

12 c. stenographic, video or audio court reporters engaged to record depositions
 13 in this litigation, and certified interpreters and/or translators for those depositions, if any;

14 d. non-party expert(s) or consultant(s) and their secretarial, technical and
 15 clerical employees (including but not limited to photocopy service personnel and document
 16 management vendors, such as coders and data-entry personnel, retained by outside counsel) who
 17 actively assist in the preparation of this action;

18 e. any person identified on the face of any such Confidential Information as
 19 an author or recipient thereof;

20 f. any person who is determined to have been an author and/or previous
 21 recipient of the Confidential Information, but who is not identified on the face thereof, provided
 22 there is prior testimony of actual authorship or receipt of the Confidential Information by such
 23 person prior to such person being shown any Confidential Information;

24 g. any non-party engaged by the Parties or appointed by the Court for
 25 purposes of acting as a Discovery Referee, Special Master, and/or neutral arbitrator or mediator in
 26 any alternative dispute resolution procedures in which the Parties may participate; and

27 h. any other person by written agreement among all Parties' counsel, or by
 28 order of the Court;

1 7. Each individual identified in paragraphs 6 (a) - (h) above to whom Confidential
 2 Information is furnished, shown, or disclosed shall, prior to the time he or she receives access to
 3 such materials, be provided by counsel furnishing him or her such material a copy of this Order.
 4 Counsel disclosing Confidential Information shall advise said persons of the provisions of this
 5 Confidentiality Agreement and secure adequate assurance of confidentiality and agreement from
 6 that person or entity: (1) to be bound by the terms hereof, (2) to maintain the received
 7 Confidential Materials in confidence, and (3) not to disclose the received Confidential Materials
 8 to anyone other than in accordance with the terms of this Confidentiality Agreement.

9 8. The foregoing is without prejudice to the right of any party to this Order to:
 10 a. seek to modify or obtain relief from any aspect of this Order; or
 11 b. object to the use, relevance, or admissibility at trial or otherwise of any
 12 material, whether or not designated in whole or in part as Confidential Information governed by
 13 this Protective Order.

14 9. Nothing in this Confidentiality Agreement shall prohibit a Party from using
 15 Confidential Materials for deposition preparation, use during a deposition, or from marking any
 16 Confidential Materials as an exhibit to a deposition and examining the deponent thereon.
 17 Likewise, nothing in this Confidentiality Agreement shall prohibit a Party from using
 18 Confidential Materials for examination of a witness at trial, or from marking any Confidential
 19 Materials as an exhibit during trial and examining a trial witness thereon.

20 10. Nothing in this Confidentiality Agreement shall prohibit a Party from disclosing
 21 Confidential Materials pursuant to a valid law enforcement subpoena or as required to do so by
 22 order of a court of competent jurisdiction. Disclosure of Confidential Materials pursuant to a
 23 valid law enforcement subpoena or as required by order of a court of competent jurisdiction shall
 24 not constitute a violation of this Agreement.

25 11. If Confidential Information is disclosed at a deposition, only the stenographic,
 26 video or audio reporter and those persons who are authorized by the terms of this Order to receive
 27 such material may be present. The portions of the transcripts of all testimony designated as
 28 Confidential Information shall be labeled with the appropriate designation by the reporter. If any

1 document or information designated as Confidential Information pursuant to this Order is used
 2 during the course of a deposition, that portion of the deposition record reflecting such material
 3 shall be labeled with the appropriate "Confidential" designation.

4 12. Any filing made with the Clerk of the Court, as such filing may be required or
 5 permitted by the local rules of this Court, which contains or has attached to it Confidential
 6 Information, shall be filed under seal and shall remain under seal (except that it may be unsealed
 7 for examination by the Court as necessary). For good cause shown, the Court may order that such
 8 filing or portions thereof be unsealed.

9 13. In the event of a hearing or trial in this matter at which any party intends to present
 10 information or materials designated hereunder as Confidential, counsel for the Parties will meet
 11 and confer to determine what safeguards are necessary to protect against the disclosure of the
 12 designated information or materials, and shall attempt to determine the least intrusive and
 13 burdensome means of protecting such materials during the proceeding. Counsel for the Parties
 14 shall confer on appropriate procedures for protecting the confidentiality of any documents,
 15 information and transcripts used in the course of any court proceedings, and shall incorporate
 16 such procedures into the pre-trial order. For trial, the party seeking to use information designated
 17 Confidential without redacting the Confidential portion of the information, shall, via written
 18 motion in limine filed and served pursuant to the Court's trial scheduling order, submit all such
 19 information (document, transcript, interrogatory answer, etc.) to the trial judge under seal for in
 20 camera review, and a decision on whether such information can be used at trial, and if so, what
 21 limitations, if any, shall apply.

22 14. This Confidentiality Agreement shall survive the termination of this action and
 23 shall continue in full force and effect thereafter. Within thirty (30) calendar days after the
 24 termination of this action and the expiration of any and all rights of appeal or further appeal or the
 25 expiration of time to seek leave to appeal, all persons or entities that have received Confidential
 26 Materials shall return all such Confidential Materials to counsel for the designated Party. As an
 27 alternative to returning all or part of such Confidential Materials, persons or entities may certify
 28 in writing for the producing Party that they have destroyed all unreturned Confidential Materials.

1 Notwithstanding the foregoing, counsel for the Parties may keep Confidential Information to
2 maintain the integrity of their respective files. Where a Party has provided Confidential Materials
3 to a retained expert or consultant or any other person or entity, it shall be the responsibility of that
4 Party to obtain the return or destruction of the Confidential Materials from such expert or
5 consultant. This paragraph does not apply to the copies of Confidential Materials that have been
6 submitted to and are in the possession of the Court. This Confidentiality Agreement shall not
7 preclude the use or disclosure of any Confidential Materials during the trial of this action, subject
8 to the right of any Party to seek an Order governing use of the Confidential Materials at trial.

9 15. If at any time any Confidential Information protected by this Order or information
10 produced in this litigation is subpoenaed from the receiving party by any court, administrative or
11 legislative body, or is requested, via formal discovery request or otherwise, by any other person
12 or entity purporting to have authority to require the production of such information, the party to
13 whom the subpoena or other request is directed shall, within three (3) business days of receipt,
14 give the other party hereto notice of said request. The party receiving the discovery request or
15 subpoena shall in the interim take all necessary steps to protect the potentially Confidential
16 Information and all information so designated in this case as if it were its own confidential
17 information. The party receiving notice of a pending discovery request, subpoena, or other
18 inquiry, shall have three (3) business days to advise, in writing, the party from whom the
19 discovery was requested of its intent to protect the confidentiality of the information sought, or of
20 its decision to allow it to be disclosed. The party objecting to the disclosure of the Confidential
21 Information shall take all steps it deems necessary at its own expense, including incurring and
22 paying its own attorney's fees. It is acknowledged and agreed that any violation or threatened
23 violation of this provision by any party will cause immediate and irreparable harm entitling the
24 other party to obtain injunctive relief, including a temporary restraining order without notice
25 pending a hearing on an application for preliminary injunction in addition to all other legal
26 remedies available.

27 16. The terms of this Order shall be effective and enforceable as between the Parties
28 immediately upon its execution by counsel for such parties.

1 17. All persons subject to the terms of this Order agree that this Court shall retain
2 jurisdiction over them for the purpose of enforcing this Order.

3 18. This Confidentiality Order may only be amended or modified by written
4 agreement of the parties hereto and approved by this Court, or by order of this Court.

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6 Dated this 23rd day of February, 2011.

7 JAFFE, RAITT, HEUER & WEISS

8 By:

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11 27777 Franklin Rd. Ste. 2500
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14 *Attorney for Plaintiffs*
15 *PRO HAC VICE*

16
17 Dated this 23rd day of February, 2011.

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ORDER

Based upon the parties' stipulation, **IT IS SO ORDERED** that the terms of this Confidentiality Agreement shall govern the production of Confidential Information, as defined herein, for the above-captioned litigation.

IT IS FURTHER ORDERED that this Court shall have jurisdiction over the parties hereto for the purpose of enforcing the terms and conditions of this Confidentiality Agreement.

DATED this 25th day of February, 2011.

DATED this 25th day of February, 2011.

GEORGE FOLEY, JR.
United States Magistrate Judge

Respectfully submitted,

SNELL & WILMER L.L.P.

By:

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